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Item 5 of the provisional agenda

STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Note by the Secretariat

Addendum

Contribution from the African Commission on Human and Peoples' Rights

The attention of the Preparatory Committee is drawn to the attached document entitled "Conclusions and recommendations of the Seminar on the National Implementation of the African Charter of Human and People's Rights in the Internal Legal Systems in Africa". This document is submitted by Mr. Ibrahim Ali Badawi El-Sheikh, Chairman of the African Commission on Human and People's Rights.

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Annex

CONCLUSIONS AND RECOMMENDATIONS OF THE SEMINAR ON THE NATIONAL IMPLEMENTATION OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS IN THE INTERNAL LEGAL SYSTEMS IN AFRICA

Banjul, The Gambia
26-30 October 1992

Organised by the

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

in cooperation with

THE RAOUL WALLENBERG INSTITUTE
UNIVERSITY OF LUND, SWEDEN

The Seminar on the National Implementation of the African Charter on Human and Peoples' Rights held in Banjul, The Gambia from 26 to 30 October 1992 adopted the following conclusions and recommendations :

1. The Seminar notes the following in relation to the status of the Charter :

   a) States party to the African Charter shall accord the Charter a definitive legal status in their national legal systems.

   b) In the event of a conflict involving a provision of the Charter and national legislation the Charter provision shall prevail.

   c) The African Charter is a treaty within the definition of the Vienna convention on the Law of Treaties. It enshrines the fundamental principle pacta sunt servanda and an obligation is imposed on parties thereto not to invoke their municipal laws as an excuse for failure to perform an obligation imposed by the Charter.

   d) The provisions of the African Charter as are in force shall not be repealed, amended or suspended save in accordance with general principles of international law.

The Seminar considers that :

2. The following points should be observed in relation to the incorporation of the African Charter in internal legal systems:

   a) The automatic incorporation of the African Charter into the internal legal system of the parties thereto could be advantageous to the States Parties to the Charter in the sense of sparing them the difficulties of reviewing their present legislation so as to conform to the African charter.

   b) Whatever means a State Party to the African Charter may choose in order to make the Charter applicable in its internal legal system, the provision of the Charter are nevertheless to be fully observed in accordance with the requirements of international law.

3. The Seminar believes that human rights must primarily be secured within the national legal system of each State Party to the Charter. In this regard it is vital that :

   a) The Rule of Law is strictly respected in all activities of the State and all branches of public administration.

b) The judiciary is guaranteed full independence. In this regard States party to the Charter are requested to facilitate the establishment and improvement of appropriate national institutions for the promotion and protection of the rights and freedoms guaranteed by the Charter in accordance with article 26 of the Charter.

c) Access to Courts of law is secured to all individuals regardless of their financial means.

4. The Seminar is of the view that :

a) The African Charter should be interpreted in the light of the impressive body of jurisprudence which has developed on similar provisions in other universal and regional instruments on human rights and related matters. Such instruments could be of practical relevance and value to judges and counsel and should as often as possible be referred to.

b) It is within the proper nature of the judicial process and well established judicial functions for national courts to have regard to international obligations which a country undertakes whether or not they have been incorporated into domestic law - for the purpose of removing ambiguity or uncertainty from national constitutions and laws written or unwritten.

c) Judges and Lawyers have a special contribution to make in administration of justice in fostering universal respect for fundamental rights and freedoms.

d) It is particularly important to ensure that all persons including judges, lawyers, litigants and others are made aware of applicable human rights norms wherever they may be stated and particularly those in the Charter. In this respect the Seminar underlines the importance of Article 25 of the African Charter which obligates States party to the Charter to promote and ensure through teaching, education and publication, respect for the rights and freedoms expressed in the Charter.

5. The Seminar welcomes the fact that 47 African States have ratified the Charter. It is hoped that such ratification is followed by compliance by the States of their obligation to submit reports under article 62 of the Charter on the measures taken with a view to implementing the African Charter.

6. The Seminar notes with interest the activities undertaken so far by the African Commission on Human and Peoples' rights and expresses the views that :

a) It is important that a State's report submitted to the African Commission should indicate :

i) Whether the rights, fundamental freedoms and duties expressed in the Charter are protected by the Constitution of that State or by a "Bill of Rights" and whether there are provisions for derogations and in what circumstances;

ii) Whether the provisions of the Charter can be invoked before the courts, other tribunals or administrative authorities for direct implementation or application or whether they have to be incorporated into internal laws or regulations before they are enforceable by the authorities;

iii) What judicial, administrative or other authorities have jurisdiction affecting human rights;

iv) What remedies are available to an individual whose rights are violated;

v) Non-legislative measures adopted to implement the Charter;

vi) Difficulties encountered in the process of implementing the Charter.

b) It would facilitate the work of the Commission and that of the OAU Member States if the States designate high ranking officials to act as focal points in the relations between the Commission and the States. Such focal points would facilitate the follow-up on the Commission's recommendations and contact between states and the Commission.

c) It is noted that the lack of legal aid services in Africa precludes the majority of the African population from asserting their human rights. It is recommended that the question of legal aid and recourse procedures should be accorded greater attention in the work of the African Commission and that States and NGOs should take the initiative to promote the establishment of legal aid services.

d) The Commission should find ways to provide advisory services upon request to states, in relation to the incorporation of the African Charter in their internal legal systems, preparation of their reports and other matters relating to the implementation of the Charter.

e) The resources and time allocated for the work of the Commission are inadequate. In this regard the Assembly of Heads of State and Government of the OAU are requested to provide the Commission with full political, financial and administrative support with a view to enabling the Commission to properly carry out its mandate in accordance with the Charter which is vital for ensuring promotion of respect for and protection of the rights expressed in the Charter and thus securing peace, stability and development in Africa.

7. The Seminar considers it advisable that the OAU takes initiatives to revise the Charter including the possibility of creating an African Human Rights Court. Such revision should be carried out by the adoption of additional protocols under article 66 of the Charter. The seminar looks upon such a revision as a move towards strengthening the work of the Commission as well as a response to developments occurring since the adoption of the Charter.

8. The Seminar presumes that after adopting the African Charter and creating an independent Commission the Assembly of the Heads of State and Government of the OAU shall see to it that the Commission's recommendations are responded to, that they are published and that just satisfaction is afforded to injured parties.

9. The Seminar underlines the importance of the African Commission taking advantage as it shall consider appropriate, of relevant universal and regional mechanisms established to promote and protect human rights.

10. The Seminar, aware of the links existing between human rights and international humanitarian law, wishes to underscore the need to disseminate and implement the provisions of international humanitarian law applicable in time of armed conflicts.

11. The Seminar calls upon all Contracting Parties to instruments relating to international humanitarian law to adopt adequate measures at the national level to ensure the implementation of the provisions of international humanitarian law. Such measures are necessary for the protection of the human being in time of armed conflicts.